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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940.

No. 346

JEREMIAH D. MAGUIRE AND RUTH S. MAGUIRE,
Petitioners,

vs.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

REPLY BRIEF FOR PETITIONERS.

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

REPLY BRIEF FOR THE PETITIONERS.

QUESTIONS PRESENTED.

The Commissioner correctly states that, pursuant to a testamentary trust established under the will of the father of the petitioner,[1] her share of certain personal property was distributed to her twenty years after her father's death; that she thus received not only securities formerly owned by the decedent but also other securities purchased by the trustees under the authority "to make investments • • • and change the same in their discretion" contained in paragraph 3 of the will of petitioner's father

1. Petitioners are husband and wife who filed a joint return (R. 3). The income involved is that of Ruth Swift Maguire. The word "taxpayer" or the word "petitioner", wherever used in this brief, is intended to mean Ruth Swift Maguire, unless the context indicates otherwise.

(R. 23). During the year 1930 she sold securities of both groups, and the questions presented relate to the proper basis for determining gain or loss upon these sales, namely:

(1). Whether, under Section 113 (a) (5) of the Revenue Act of 1928, the basis of the first group of securities is their value when received by the trustees from the decedent's estate, or their value at the date of distribution by the trustees to petitioner, who is the taxpayer; and

(2) Whether the basis of the second group of securities is their cost to the trustees or their value at the date of distribution (Br. 2-3).

STATUTES INVOLVED.

The statutes involved are set forth in the Appendix, *infra*, pages 19 to 20.

SUMMARY OF ARGUMENT.

I.

The taxpayer, as a residuary legatee, acquired by will by general bequest all of the property sold by her, and the basis for determining her gain from the sale of such property is its value "at the time of the distribution to the taxpayer."

II.

Property purchased by the testamentary trustees and distributed to the taxpayer was acquired by will, and its basis is the fair market value "at the time of the distribution to the taxpayer."

GENERAL STATEMENT.

The argument of the Commissioner is directed toward the following conclusions:

(1) That the term "time of the distribution to the taxpayer", as used in the applicable statute, should be construed to mean "time of the distribution from the estate"; and

(2) That property passing to the beneficiaries of a testamentary trust, if purchased by the testamentary trustees, is not "acquired by will".

Such argument is based upon the theory that the history of the provisions relating to the basis for property acquired "by gift or inheritance" reveals a "general plan" to leave the value of such property, as of the date of gift or of the decedent's death, free from income tax in the beneficiary's hands and to use that value as the beneficiary's

basis for determining gain or loss on a subsequent disposition (Br. 6). The Commissioner recognizes that Sections 113 (a) (5) of the Revenue Acts of 1928 and 1932, which sections were identical, constitute "a legislative departure" from the "scheme" above mentioned, which "immunizes from tax effect" gains or losses accruing after the date of death and before distribution to the taxpayer (Br. 16). This admission by the Commissioner is compelled by the provisions of the 1928 and 1932 Revenue Acts.

The Commissioner nevertheless asserts that Congress "could not have intended a material departure" from the general plan (Br. 16), and that the "legislative purpose" is observed by construing the words "the time of the distribution to the taxpayer" as contemplating the time when the estate is closed and distribution is made out of the estate (Br. 7). Such construction requires that an implied meaning be attached to the words of the statute which is quite contrary to their known and ordinary signification. As stated in Petitioners' Original Brief, p. 13, the words "at the time" need no construction; the word "taxpayer" is defined as the person subject to the tax imposed by the Act. The taxpayer's identity having been established, the plain language of the Act eliminates from consideration any time except the time of the actual "distribution to the taxpayer".

The construction sought by the Commissioner requires a further conclusion, namely, that subdivision (5) of Section 113 (a) of the Revenue Act of 1928, dealing with property acquired by will, does not cover property which was purchased by testamentary trustees following the decedent's death and distributed to the beneficiaries of a testamentary trust established by the will (Br. 7). The Commissioner admits that if such property is held to be "acquired by will", the basis is found in Section 113 (a) (5) of the Revenue Act of 1928 and that such basis is the value of such property "at the time of the distribution to the tax-

payer". Since the distribution from the estate occurred, in the instant case, on December 11, 1905, property purchased by testamentary trustees subsequent to that date and distributed to the taxpayer on March 29, 1923, must take as a basis the value at March 29, 1923, if "acquired by will"; and it follows that in respect to such property the term "at the time of the distribution to the taxpayer", as used in the applicable statute, necessarily refers to the time of the distribution by the testamentary trustees (who purchased the property) and not to the time of the distribution from the estate.

The Commissioner is forced to admit that property purchased by executors or administrators of an estate is "acquired by will" (Br. 8, 29), but argues that there is no reason to "extend the construction by implication". In deciding this case, it is not necessary to extend by implication the construction of the phrase "acquired by will", because that term clearly refers to property acquired by a beneficiary under a will, whether that beneficiary be a legatee taking by specific bequest or by general bequest, or a beneficiary of a testamentary trust. Although the identical property was not held by the decedent in his lifetime, it was "acquired by will" if either the decedent's executors or his testamentary trustees purchased the property and distributed it to a residuary legatee.

ARGUMENT.

I.

The Taxpayer, As a Residuary Legatee, Acquired By Will By General Bequest All of the Property Sold By Her, and the Basis For Determining Her Gain From the Sale of Such Property Is Its Value "At the Time of the Distribution to the Taxpayer".

In respect to property owned by decedent in his lifetime and passing to the taxpayer by general bequest, the Commissioner argues (Br. 16-26) that the basis for such property is its value when distributed by the executor of the decedent's estate to testamentary trustees. It is agreed (Br. 17) that if the property had been sold by the testamentary trustees their basis would have been the value at the date of distribution by the executors, because in such case the testamentary trustees would have been the "taxpayers" referred to by the Act, and the Act prescribes the basis of such property as the value "at the time of the distribution to the taxpayer".

The Commissioner also asserts that the petitioner urges that " 'the time of the distribution to the taxpayer' referred to in the statute shifts from the date of distribution by the executors to the date of distribution by the trustees, if the latter distribute in kind, or perhaps that there are two times of distribution" (Br. 17).

Petitioner has not at any time urged that "the time of the distribution to the taxpayer" shifts from the date of distribution by the executors to the date of distribution by the trustees. On the contrary, taxpayer asserts that within the meaning of the statute *there was but one distribution to her* of the property involved in this case and

that such distribution occurred on March 29, 1923, when the property involved herein was delivered to the taxpayer.

In answer to petitioner's contention that the word "taxpayer" in the term "the time of the distribution to the taxpayer" can refer only to the person to whom the testamentary trustees delivered the property, the Commissioner contends that " 'the time of the distribution' is the date of distribution by the executors and that it so remains whether or not the testamentary trustees sell the property or distribute it in kind. * * * the word 'taxpayer' refers to the person or other taxable entity to whom the property is distributed upon termination of the administration of the decedent's estate" (Br. 18). In substance, the Commissioner's contention is that the language of Section 113 (a) (5) is ambiguous.

It is respectfully submitted that this construction of the statute has been refuted in the decisions of various United States Circuit Courts of Appeals cited below, which have held that the statute is clear and is unambiguous.

Commissioner of Internal Revenue v. *Libbey*, 100 F. (2d) 458 (C. C. A. 1st).

Commissioner of Internal Revenue v. *Gambrill* and related cases, 112 F. (2d) 530 (C. C. A. 2nd).

Haskell v. *Commissioner*, 78 F. (2d) 869 (C. C. A. 3rd).

Williamson v. *Commissioner*, 100 F. (2d) 735 (C. C. A. 6th).

In all of these cases, decisions of the United States Board of Tax Appeals were affirmed.

In *United States* v. *Van Nostrand*, 94 F. (2d) 510, the First Circuit Court of Appeals said (at page 512):

> "Congress, in its wisdom, in the last clause of Section 113 (a) (5), fixed as the cost basis for securities sold by the taxpayer the market value of them 'at the time of the distribution to the taxpayer'—in other words the time of delivery of the securities to him."

This Court in *Browder* v. *United States* (decided February 17, 1941) said in substance that "No single argument has more weight in statutory interpretation" than the plain meaning of the words of an act. Where, as in this case, the words of the statute are clear and unambiguous, the court "must apply the statute" as it finds it, "leaving to Congress the correction of asserted inconsistencies and inequalities in its operation". *McClain* v. *Commissioner*, U. S. Sup. Ct., Jan. 6, 1941.

The words of the statute are clear and unambiguous. Such a statute will be given effect as written. *Helvering* v. *Wood*, 309 U. S. 344 (1940); *Deputy* v. *duPont*, 308 U. S. 488 (1940).

In *Deputy* v. *duPont*, *supra*, this Court said (at page 497):

> "In *Old Colony R. Co.* v. *Commissioner of Internal Revenue*, 284 U. S. 552, this Court had before it the meaning of the word 'interest' as used in the comparable provision of the 1921 Act. It said, p. 560, 'as respects interest the usual import of the term is the amount which one has contracted to pay for the use of borrowed money'. It there rejected the contention that it meant 'effective interest' within the theory of accounting or that 'Congress used the word having in mind any concept other than the usual, ordinary and everyday meaning of the term'. It refused 'to assume that the Congress used the term with reference to 'some esoteric concept derived from subtle and theoretic analysis'. We likewise refuse to make that assumption here. * * * In sum, we cannot sacrifice the 'plain, obvious and rational meaning' of the statute even for 'the exigency of a hard case' " (citing *Lynch* v. *Alworth-Stephens Co.*, 267 U. S. 364, 370)[2].

The Commissioner attempts to support his contention that Section 113 (a) (5) of the Revenue Act of 1928 is am-

2. The complete quotation of the language used by this Court in *Lynch* v. *Alworth-Stephens Co.*, is: "And the plain, obvious, and rational meaning of a statute is always to be preferred to any curious, narrow, hidden sense that nothing but the exigency of a hard case and the ingenuity and study of an acute and powerful intellect would discover".

biguous by the fact that under the plain language of the Act the increment in value of property while in the hands of testamentary trustees escapes taxation if sold after distribution to the beneficiaries of the trust (Br. 18). The Commissioner admits that the increment in value of property while in the hands of the executors of an estate escapes taxation if sold after distribution, but asserts that because the Senate Committee Report on the 1934 Act [3] fails to refer to the "much more sizeable loophole", the Senate Committee was unaware of a construction of the statute which would permit increment in value of property in the hands of testamentary trustees to escape tax (Br. 19). Yet the Commissioner admits (Br. 25) that in 1934, when the Senate Committee rendered its report, the published rulings of the Commissioner [4] held that the term "time of the distribution to the taxpayer" referred to the date of delivery.

The Commissioner asserts (Br. 23) that the committee reports on the 1928 Act show a preoccupation with the decedent's death, or the administration of his estate, and not with subsequent transmissions of property. It is submitted that the statements in the Conference Report of the 1928 Act show, instead, a preoccupation with the removal of confusion in the existing law, which fixed "fair market value at the time of acquisition" as the basis. The primary concern of Congress was to enact a clear and unambiguous statute by substituting for the ambiguous term "time of acquisition" the clear and unambiguous language "time of the distribution to the taxpayer". Such language has an ordinary and known significance, whether the distribution be by executors or administrators, or by testamentary trustees, or by any other person. The controlling words in the statute are "to the taxpayer".

3. Senate Report No. 558, 73rd Cong., 2nd Sess., Int. Rev. Cum. Bul. 1939-1 (Part 2) pp. 586, 612.

4. General Counsel's Memorandum 11309, Int. Rev. Cum. Bul. XII-1, p. 126 (1933).

The Commissioner argues (Br. 24) that petitioner's construction of the statute, which is based on the plain language, gives a strange effect to Section 113 (b) "which is intended to exempt from tax accruals in value before, and not after, March 1, 1913". Such effect, in the opinion of the Commissioner, is caused by the necessity of comparison between 1913 value and 1923 value. But the Commissioner admits that, in the case of a decedent dying before March 1, 1913, the distribution might occur "not long after March 1, 1913", in which case the comparison required by the statute is still between 1913 and a date subsequent to 1913; thus the "strange effect" is one of degree only, not of principle.

The Commissioner asserts that the taxpayer's contention that the decision below conflicts in principle with the *Haskell, Williamson* and *Taft* cases is not well founded (Br. 26). In each of said cases, the term "at the time of the distribution to the taxpayer" was held to mean "at the time of the delivery to the taxpayer".

II.

Property Purchased By the Testamentary Trustees and Distributed to the Taxpayer Was Acquired By Will and Its Basis Is the Fair Market Value "At the Time of the Distribution to the Taxpayer"

In subdivision II of his brief, the Commissioner contends that within the meaning of Section 113 (a) (5) of the Revenue Acts of 1928 and 1932, property purchased by the testamentary trustees under the Swift will and distributed by them to the taxpayer was not acquired by the taxpayer by will; and that under these circumstances the basis of such property to the beneficiary is the fiduciary's cost (Br. 26-39).

The Commissioner experiences great difficulty in distin-

guishing between the distribution of personal property purchased by executors and the distribution of personal property purchased by testamentary trustees. In respect to the former, he is forced to concede that such property was "acquired by will", in view of the specific language found in the Congressional reports. However, he finally bases such distinction on the theory that "it is possible to consider that until distribution by the decedent's estate, basic testamentary disposition is in suspense; and that for tax purposes acquisition of personal property passing by general bequest or intestacy does not occur until that distribution is made. In this light property purchased by the executor prior to that distribution is acquired by the distributee by will, as though the testator (in whose stead the executor is acting) had himself made the purchase and passed the property on under his will. But once the administration is completed * * *, the basic testamentary disposition has been effected" (Br. 31-32).

The statute does not deal with a "basic testamentary disposition". In this case the court is construing and applying the statutory words "time of the distribution to the taxpayer". If the property held by the executors under the Swift will was in "suspense" until it was delivered to the trustees, it was in "suspense" until it was distributed to the taxpayer; but such "suspense" cannot affect the plain meaning of the statutory words "time of the distribution to the taxpayer".

While the Commissioner refers to the executor of an estate acting in the stead of the decedent, it is well recognized that testamentary trustees are also the creature of the decedent, made so by his will.

In the case of *Margaret E. B. Fleming*, 36 B. T. A. 773, the Commissioner took a position precisely opposite to that which he is taking here. He opposed the taxpayer's contention that the basis of stock which had been purchased and distributed by the testamentary trustee was "cost"

to the trustee; and the Commissioner requested the Board to hold and the Board found that the third sentence of Section 113 (a) (5) of the Revenue Act of 1928 was applicable.

This Court, in *Brewster* v. *Gage*, 280 U. S. 327, held that Congress, in the Revenue Act of 1928, intended the term "time of acquisition", in the case of personal property passing by general bequest or intestacy, to refer to the date of the death of the decedent. Further, Congress, in enacting the Revenue Act of 1928, was concerned with eliminating the confusion arising from conflicting constructions as to the meaning of the term "time of acquisition" and carefully avoided value at the time of acquisition as the basis for such property. The phrase "acquired by will" refers to the manner of acquisition, and not to the time.

In the course of the enactment of Section 113 (a) (5) of the 1928 Act, the House added to the section, while the bill was before the Conference Committee, a fourth sentence which provides as follows:

> "In the case of property transferred in trust to pay the income for life to or upon the order or direction of the grantor, with the right reserved to the grantor at all times prior to his death to revoke the trust, the basis of such property in the hands of the persons entitled under the terms of the trust instrument to the property after the grantor's death shall, after such death, be the same as if the trust instrument had been a will executed on the day of the grantor's death".[5]

Paraphrased, this sentence provides that where the grantor of a revocable trust dies without having revoked the trust, the basis of the property in the hands of persons entitled thereto shall be the same as if the trust instrument were a will. Therefore, property passing to the beneficiary of such trust is property acquired "by bequest or devise". Such property, whether originally transferred to the trustee by the grantor of such trust or purchased by the trus-

5. Conference Committee Report No. 1882, 70th Cong., 1st Sess., Int. Rev. Cum. Bul. 1939-1 (Part 2) pp. 444, 447.

tees during the term of the trust, is property "acquired by will".

The Conference Report describes the scope of the above-quoted provision as follows:

> "A special rule is provided in section 113 (a) (5) by which to determine the basis of property transferred in trust with the right reserved to the grantor at all times prior to his death to revoke the trust where the sale or other disposition of property occurs after the death of the grantor. *This rule includes sales or other dispositions by the trustee and also by a beneficiary of the trust*".[6] (Italics supplied.)

Under this provision, therefore, such a revocable trust is to be treated as a will when the grantor dies without having revoked the trust. Since said rule includes sales by the beneficiary of a revocable trust, which, under the statute, is treated as a testamentary trust, it inevitably follows that said rule applies to sales by beneficiaries of a testamentary trust contained in a will. The statements in the Conference Report of the 1928 Act show that Congress was aware of the problem of sales by the beneficiary of a testamentary trust and was not merely concerned with the problem of sales by an executor or by a legatee or devisee of a will which contained no trust provisions.

The basis of distribution from executors to trustees, which the Commissioner contends is applicable to personal property acquired by general bequest, cannot be applied to personal property passing under such revocable trust, because there is "no transfer from executor to trustee". There is only one fiduciary, and, under the 1928 and 1932 Revenue Acts, only the date of delivery to the beneficiary of such revocable trust can be used as the beneficiary's basis. The provisions of the 1928 and 1932 Acts are identical with the provisions of the 1934 Act.

The regulations issued under the 1928 Act (Regulations 74, Art. 596), relating to purchases by a trustee of a revo-

6. Conference Committee Report No. 1882, 70th Cong., 1st Sess., Int. Rev. Cum. Bul. 1939-1 (Part 2) pp. 444, 447.

cable trust which is treated as a will, are substantially similar to the regulations issued under the 1932 Act (Regulations 77, Art. 596). *Paul & Mertens Law of Federal Income Taxation,* Vol 2 § 18.101, pp. 363-4. Section 113 (a) (5) of the Revenue Acts of 1934, 1936, 1938, and Section 113 (a) (5) of the Internal Revenue Code relate to property transmitted at death, and all of such regulations appear under the heading "Basis of Property Acquired by Bequest, Devise, or Inheritance".

Inasmuch as property purchased by a trustee under an unrevoked revocable trust has been thus consistently treated as property acquired by bequest, devise or inheritance, it follows that property purchased by testamentary trustees and distributed to beneficiaries was acquired by the beneficiaries "by will".

The Commissioner asserts that under the Revenue Acts of 1926 and before, and 1934 and thereafter, a number of Circuit Courts of Appeals have held that a remainderman who takes property following a testamentary trust should be taxed "on the increments in the value of the property accruing" after the date of the decedent's death (Br. 34). The Commissioner then argues that "If these decisions are correct, it cannot reasonably be concluded that that property 'acquired by bequest, devise, or inheritance' includes property purchased by testamentary trustees. For if it did, time of acquisition would necessarily refer either to the date of purchase by the trustees, or the date of termination of the trust and transfer of the property by the trustees to the beneficiary" (Br. 35).

The correctness of the holding of the decisions relating to the Revenue Acts of 1926 and before, and of 1934 and thereafter, is not questioned, because those Revenue Acts fix the basis in all cases of property acquired by bequest, devise, or inheritance as its fair market value "at the time of acquisition". Under those Acts, it was correctly decided

that the basis of property purchased by a testamentary trustee and distributed to a beneficiary of the testamentary trust was cost. This merely meant that in such cases "cost" was the equivalent of fair market value of the property at the time of acquisition, which is self-evident.

It is significant that notwithstanding the Commissioner's argument that the term "property acquired by bequest, devise, or inheritance", found in all of the Revenue Acts except those of 1928 and 1932, does not apply to property purchased by testamentary trustees, the 1934 and all subsequent regulations relating to such purchases by testamentary trustees have been placed under the heading "Basis of Property Acquired by Bequest, Devise, or Inheritance".

The Commissioner also argues that "there is no reason to believe that Congress intended to leave out of tax account advantages or disadvantages inhering in the purchase itself" (Br. 35).

Congress re-enacted in 1932 Section 113 (a) (5) of the Revenue Act of 1928, thus leaving in effect the provision of the 1928 Act that the basis in the hands of a distributee of personal property acquired by general bequest or intestacy should be "the fair market value of the property at the time of the distribution to the taxpayer".

In the decision of the United States Circuit Court of Appeals (2nd Circuit) in *Brewster* v. *Gage*, which was rendered February 4, 1929 (30 F. (2d) 604), the court held that if the "date of acquisition" meant the "time of distribution", gains accruing between the date of a decedent's death and the time of distribution to the taxpayer of personal property acquired by intestacy, or by general or residuary bequest, would escape taxation. The court said (at page 605):

> "It surely was not the intent of Congress that the acquisition of a mere legal title should completely wipe out or render untaxable the gain which had been

> acquired by the equitable ownership, and which was in fact, realized upon the sale made when the date of distribution arrived. Moreover, it would be an unfortunate construction, which is not demanded by the statute, that would place it within the power of personal representatives and the real owners, namely, the legatees or distributees, to defer distribution in order to escape tax. This should be avoided."

Congress must have been aware of the decision of the Circuit Court of Appeals (2nd Circuit) in *Brewster* v. *Gage* and its affirmance by the Supreme Court on January 6, 1930 (280 U. S. 327), when it re-enacted in 1932 Section 113 (a) (5) of the Revenue Act of 1928, and must have known that to fix value at date of distribution of personal property acquired by general bequest under a will might allow gain accruing prior to distribution to escape taxation. It is reasonable to conclude that notwithstanding such possibility, Congress deemed it wise and proper to re-enact Section 113 (a) (5) of the 1928 Act.

The Commissioner submits that the provision relating to property acquired by bequest, devise, or inheritance, found in all of the acts except those of 1928 and 1932, does not apply to purchases by testamentary trustees; that property so purchased is acquired by the beneficiary by purchase and the legatee's basis therefor is the trustees' cost. The Commissioner states that "Since 1934 the Treasury Regulations have expressly so provided" (citing Article 113 (a) (5)-1(d) of Treasury Regulations 86, 94 and 101) (Br. 36).

It appears from such Treasury Regulations that Article 113 pertains to subparagraph (5) of Section 113 (a) of the 1934, 1936 and 1938 Revenue Acts, rather than to the general provision of Section 113 (a). The Commissioner thus recognizes that Article 113 (a) (5)-1 (d), rather than Article 113 (a), relates to the basis of a beneficiary of property which had been purchased by testamentary

trustees during their administration of the trust estate. Thus Article 113 (a) (5)-1 (d) of the Treasury Regulations (1934 Act) supports petitioner's contention that property so purchased by a testamentary trustee and distributed to a beneficiary of a trust is property "acquired by will".

It clearly appears from the decision of this Court in *Lyeth* v. *Hoey*, 305 U. S. 188, that the exemption provided by Section 22 (b) (3) of the Revenue Act of 1932 (which was identical with the provision of the 1928 Act) is not lost to beneficiaries and remaindermen if the executors or testamentary trustees, acting under powers granted them in the will, invest or reinvest the decedent's estate. It is submitted, therefore, that the basis provided by the third sentence of Section 113 (a) (5) is not lost to a beneficiary or remainderman under similar circumstances.

In deciding the case of *Reynolds* v. *Commissioner of Internal Revenue*, 114 F. (2d) 804 (C. C. A. 4th), referred to by the Commissioner (Br. 36), the court held that securities purchased by testamentary trustees under the will of the taxpayer's father, and by said trustees distributed to the taxpayer, constituted property "acquired by bequest, devise, or inheritance" within the meaning of Section 113 (a) (5) of the 1934 Revenue Act. In so deciding, the court said that obviously the will of R. J. Reynolds (the taxpayer's father) "was the source of the taxpayer's acquisition" and cited the decision of the Second Circuit Court of Appeals in *Commissioner* v. *Gambrill*, which case will be argued immediately after this case has been submitted.

Conclusion.

For the reasons stated the decision of the Circuit Court of Appeals (Seventh Circuit) should be reversed.

Respectfully submitted,

Albert H. Veeder,
Francis E. Baldwin,
Counsel for Petitioners.

March, 1941.

APPENDIX.

Revenue Act of 1928, c. 852, 45 Stat. 791:

SEC. 22 (b). *Exclusions from Gross Income.*—The following items shall not be included in gross income and shall be exempt from taxation under this title:

* * * * * *

(3) *Gifts, Bequests, and Devises.*—The value of property acquired by gift, bequest, devise, or inheritance (but the income from such property shall be included in gross income);

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SEC. 111. *Determination of Amount of Gain or Loss.*

(a) *Computation of gain or loss.*—Except as hereinafter provided in this section, the gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the basis provided in Section 113, and the loss shall be the excess of such basis over the amount realized.

SEC. 113. *Basis for Determining Gain or Loss.*

(a) *Property acquired after February 28, 1913.*—The basis for determining the gain or loss from the sale or other disposition of property acquired after February 28, 1913, shall be the cost of such property; except that—

* * * * * *

(5) *Property Transmitted at Death.*—If personal property was acquired by specific bequest, or if real property was acquired by general or specific devise or by intestacy, the basis shall be the fair market value of the property at the time of the death of the decedent. If the property was acquired by the decedent's estate from the decedent, the basis in the hands of the estate shall be the fair market

value of the property at the time of the death of the decedent. In all other cases if the property was acquired either by will or by intestacy, the basis shall be the fair market value of the property at the time of the distribution to the taxpayer. In the case of property transferred in trust to pay the income for life to or upon the order or direction of the grantor, with the right reserved to the grantor at all times prior to his death to revoke the trust, the basis of such property in the hands of the persons entitled under the terms of the trust instrument to the property after the grantor's death shall, after such death, be the same as if the trust instrument had been a will executed on the day of the grantor's death;

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(b) *Property acquired before March 1, 1913.*—The basis for determining the gain or loss from the sale or other disposition of property acquired before March 1, 1913, shall be:

(1) the cost of such property (or, in the case of such property as is described in subsection (a) (1), (4), (5), or (12) of this section, the basis as therein provided), or

(2) the fair market value of such property as of March 1, 1913,

whichever is greater. In determining the fair market value of stock in a corporation as of March 1, 1913, due regard shall be given to the fair market value of the assets of the corporation as of that date.

SEC. 701. *Definitions.*

(a) When used in this Act—

(1) The term "person" means an individual, a trust or estate, a partnership, or a corporation.

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(13) The term "taxpayer" means any person subject to a tax imposed by this Act.

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